

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 16-20576

Hon. Stephen J. Murphy, III

RANDY NIBUNGCO MONTANTE,

Defendant.

/

**SENTENCING**

BEFORE THE HONORABLE STEPHEN J. MURPHY, III  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan 48226  
Thursday, January 25, 2018

APPEARANCES:

For the Plaintiff MARGARET M. SMITH  
United States of America: United States Attorney's Office  
211 W. Fort Street  
Suite 2001  
Detroit, Michigan 48226-3220  
313-226-9135

For the Defendant CAMILLA BARKOVIC  
Randy Nibungco Montante: Camilla Barkovic, Attorney at law  
25805 Harper Avenue  
St. Clair Shores, Michigan 48081  
586-773-2120

To obtain a certified copy of this transcript, contact:  
Linda M. Cavanagh, CSR-0131, RMR, RDR, CRR, CRC  
Official Court Reporter  
(313) 234-2616 • [www.transcriptorders.com](http://www.transcriptorders.com)

TABLE OF CONTENTSPageSENTENCE ENHANCEMENT OBJECTION:

Argument by Ms. Barkovic.....	5
Ruling by the Court.....	5
Argument by Ms. Smith.....	6
Further Argument by Ms. Barkovic.....	7
Further Argument by Ms. Smith.....	10
Further Ruling by the Court.....	13

SENTENCING:

Allocution by Ms. Barkovic.....	18
Allocution by Defendant Randy Montante.....	21
Allocution by Ms. Smith.....	26
Comments by the Court.....	34
Comments by Mrs. Montante.....	35
Further Comments by the Court.....	37
Sentence of the Court.....	40

EXHIBITSIdentificationOfferedReceived

NONE

1 Detroit, Michigan

2 Thursday, January 25, 2018

3 — — —

4 (Proceedings commenced at 11:11 a.m., all parties  
5 present)

6 THE CLERK: The Court calls Case No. 16-20576, United  
7 States of America versus Randy Montante.

8 Counsel, please state your appearances for the  
9 record.

10 MS. SMITH: Good morning, Your Honor. Maggie Smith  
11 appearing on behalf of the United States.

12 MS. BARKOVIC: Good morning, Your Honor. May it  
13 please the Court, Camilla Barkovic appearing on behalf of Mr.  
14 Montante who is present.

15 THE COURT: Okay. Good morning. Everybody may be  
16 seated. Thank you, Gordon, and thank you, Ms. Ross, for being  
17 here as well.

18 The defendant is here for his sentencing, and I would  
19 invite Ms. Barkovic and Mr. Montante to approach the microphone  
20 here and we can get started.

21 Morning, Mr. Montante. How are you?

22 DEFENDANT MONTANTE: Good morning. I'm well.

23 THE COURT: Okay. You read the entire Pre-Sentence  
24 Report along with any revisions that have been made to it along  
25 with your lawyer, Ms. Barkovic, correct?

1 DEFENDANT MONTANTE: Yes.

2 THE COURT: Okay. All right. I understand that  
3 there are no issues in dispute. There has been a change of  
4 counsel and quite a bit of litigation, and after the sentencing  
5 memorandum came in from Ms. Barkovic prior to our last  
6 sentencing date, I did order an exam from Dr. Sugrue, which he  
7 conducted and provided a report on, but I just want to make  
8 sure -- thank you, Gordon. We had a trial in here yesterday  
9 and we moved Ms. Smith's microphone but it's back now.

10 So Ms. Smith, no objections to the report, the  
11 guideline range, the Offense Level or category or anything like  
12 that?

13 MS. SMITH: Your Honor, I do not, but I do recall  
14 that the defense did file an objection in their sentencing  
15 memorandum to the previously agreed-upon plus four enhancement  
16 for sadomasochistic conduct in the offense.

17 THE COURT: Okay. All right.

18 MS. BARKOVIC: That is correct.

19 THE COURT: Okay. Well, you're okay with the report  
20 though, right?

21 MS. SMITH: Yes.

22 THE COURT: All right. Okay. The probation officer  
23 did not receive a -- an objection from Mr. Schulman and nothing  
24 was sent by Ms. Barkovic to her after the Pre-Sentence Report  
25 came out.

1 I did read about the legal arguments that both  
2 lawyers made regarding the enhancement, and do you want to make  
3 that as an objection now, Ms. Barkovic?

4 MS. BARKOVIC: Yes, Your Honor, I would. I would  
5 reiterate everything that was set forth in my supplemental  
6 sentencing memorandum as it relates to 2G2.1(b) (4) (A). My  
7 contention is there's been no evidence presented to establish  
8 that the defendant had ever received any photographs,  
9 recordings or other items of a sadistic or violent nature.

10 In addition, Your Honor, I would just note today that  
11 I am also concerned about the scoring of 2G2.1(b) (6) (B) (i)  
12 which requires the use of a computer. My contention, Your  
13 Honor, is that essentially the use of a computer is implied by  
14 the nature of the production charge pursuant to which Mr.  
15 Montante previously had pled guilty to, so I don't believe it's  
16 an appropriate enhancement and I would ask the Court not score  
17 it.

18 THE COURT: Okay. Well, I can speak to that and deny  
19 it. If you want to make a written post-sentencing motion or  
20 argument with -- with case law, you can do that. But I'm well  
21 familiar with that particular objection and argument and we've  
22 seen it before, and conceptually I agree with what you say  
23 because you're making a double-counting argument, but legally I  
24 must deny the objection because the use of the computer  
25 contained within the offense along with the sentencing

1 enhancement has time and again been evaluated by the Sixth and  
2 other circuits and it would be erroneous of me not to enhance  
3 with the two points for the use of the computer, even though it  
4 is subsumed within the offense conduct itself. I understand  
5 that, but I'm denying the objection because I think that's been  
6 resolved legally in the past.

7           You want to speak to that, Ms. Smith?

8           MS. SMITH: Your Honor, I would just point out that  
9 the parties did have a Rule 11 Plea Agreement and these  
10 enhancements were agreed upon --

11           THE COURT: Right.

12           MS. SMITH: -- over a year ago.

13           THE COURT: Right.

14           MS. SMITH: And I think I covered the 2G2.1(b) (4)  
15 sadomasochistic --

16           THE COURT: Well, we're not there yet. I mean I  
17 just -- I just said that on the law I -- I am overruling the  
18 objection she made. I agree, it was in the Plea Agreement, but  
19 legally you agree that I'm -- I'm -- I'm correct based on my  
20 recollection of the case law on the use of the computer  
21 enhancement, right?

22           MS. SMITH: Yes, Your Honor. And I would also add  
23 that the 2012 United States Sentencing Commission has indicated  
24 that it purposely set offense levels lower to account for more  
25 commonly applied enhancements such as the plus two for use of a

1 computer.

2 THE COURT: Okay. All right. I appreciate that.

3 Now, on the 2G2.1(b) (4) four-level enhancement, I  
4 read both what Ms. Barkovic had to say in her supplemental  
5 sentencing memorandum of November 27 and I also read Ms.  
6 Smith's response which was lodged on December 21, 2017 at pages  
7 7 through 9. Both lawyers have cited *U.S. vs. Zhao, Mood,*  
8 *McCoy, Pinchot* and *Grimes*. Ms. Smith distinguishes them from  
9 this case and contends that *Weiner* or *Wiener*, as you will, and  
10 *Fogle* along with *State of Michigan vs. Pugh* are  
11 distinguishable.

12 I've looked at everything and I'm ready to hear  
13 anything else you want to say on the legal issue subsumed  
14 within 2G2.1(b) (4), Ms. Barkovic.

15 MS. BARKOVIC: Your Honor, I would just indicate that  
16 there's been no evidence necessarily presented to this Court  
17 which would establish that Mr. Montante solicited MV-1 to  
18 engage in the alleged actions nor were any of those images or  
19 recordings located on any of his devices. Throughout the  
20 course of the proceedings that has been a frequency -- excuse  
21 me, frequently referenced issue by the prosecution, and the  
22 bottom line is there is no record that he ever received them  
23 nor is there a record that he solicited them from MV-1.

24 I would also indicate even if the Court were to find  
25 sufficient evidence to indicate that he essentially did receive

1 those images or something of that nature, I would object  
2 because I don't believe that what he may have received, if  
3 anything, would be violent in nature, sadistic in nature.

4 I direct the Court to the case of *United States vs.*  
5 *Corp.*

6 THE COURT: Yes.

7 MS. BARKOVIC: And in that case, Your Honor, the  
8 Sixth Circuit essentially defined the buzzwords in the relevant  
9 enhancement indicating that they're -- involved generally the  
10 infliction of pain or humiliation, painful, coercive or abusive  
11 images and other depictions of violence. I don't believe any  
12 of that was depicted here.

13 THE COURT: Do you have Ms. Smith's sentencing  
14 memorandum with you?

15 MS. BARKOVIC: Your Honor, I don't know if I have it  
16 with me.

17 THE COURT: All right.

18 MS. BARKOVIC: But I have reviewed it extensively and  
19 I'm prepared to address it.

20 THE COURT: All right. The government cites *Corp*,  
21 and I agree with both lawyers that that's the appropriate  
22 standard, legal standard under which to look at the  
23 enhancement, (b) (4).

24 At the bottom of page 6 of Ms. Smith's memo, she sets  
25 forth four different videos that were made allegedly at Mr.



1 Montante's behest and included four different behaviors that  
2 she argues were within not only the offense level conduct of --  
3 of 1(b)(4) but within the parameters of -- of *Corp* as well.

4 Putting aside for the moment the ultimate question,  
5 what's the effect of him not having received them? If -- if he  
6 wrote or Skyped or texted or said on video do this and she did  
7 and the government recovered these videos, which I don't think  
8 there's any dispute that they did, how does that get Mr.  
9 Montante out of the parameters of the enhancement?

10 MS. BARKOVIC: Well, Judge, essentially it has to be  
11 established that he was involved in that conduct in some  
12 manner. My contention is the discovery materials that I was  
13 provided with do not sufficiently establish that. We can go  
14 through them individually, but bottom line is he never received  
15 them according to the discovery materials obtained. An  
16 analysis via electronic devices was conducted. There was not a  
17 single one of those four videos located on any of his devices.

18 If the government wants this to be scored, then they  
19 have to establish essentially that he was involved in the  
20 production of these videos, and I don't believe that they can  
21 do that and they've set forth nothing which conclusively  
22 establishes or sufficiently establishes that.

23 THE COURT: Well, but they do. They set forth the  
24 Plea Agreement where he signed and said, "I agree to the  
25 worksheets at the end of the Plea Agreement." And that

1 includes an enhancement for 2G2.1(b) (4), okay?

2 MS. BARKOVIC: Your Honor, I'm aware of that. That's  
3 a whole nother issue as it relates to this defendant.

4 THE COURT: All right.

5 MS. BARKOVIC: Bottom line is the Court has a  
6 obligation to ensure the guidelines are properly scored.

7 THE COURT: All right.

8 MS. BARKOVIC: And so I would ask that the Court  
9 consider my argument in light of that obligation.

10 THE COURT: All right. Put aside the Plea Agreement,  
11 Ms. Smith, it doesn't seem that Ms. Ross made findings in this  
12 regard. I -- I take you at your word that the four videos  
13 listed at page 6 of your sentencing memorandum were ultimately  
14 recovered by the FBI, but how -- how should I -- how should I  
15 go in terms of the fact that Ms. Barkovic contends, number one,  
16 that this was -- these materials were not provided by way of  
17 discovery, and number two, her client never received them  
18 during the offense conduct that he -- I take that back.  
19 Paragraph 17 of the -- of the report indeed does list the  
20 materials. So the issue is in light, notwithstanding the Plea  
21 Agreement, the defendant allegedly never received these nor  
22 were they provided in discovery. If you would like to speak to  
23 that, go right ahead.

24 MS. SMITH: Thank you, Your Honor.

25 Ms. Barkovic is incorrect on the facts. First off,

1 the nature of the relationship between Minor Victim 1 and the  
2 defendant was that of a sadomasochistic relationship, and  
3 that's evidenced by not just what Minor Victim 1 said during  
4 her interview, but there is a text message that we recovered  
5 where the defendant says, quote, "I love dominating you and I  
6 love how submissive you are." Another quote, "Probably the  
7 kinkiest was the clips, but I still remember when you put" and  
8 I bracketed [sexual item] "in your back door."

9 Now, in addition to these text messages between Minor  
10 Victim 1 and the defendant discussing this sadomasochistic type  
11 activity, number -- video number (1) that's listed at the  
12 bottom of page 6 in the government's memo was recovered off of  
13 Minor Victim 1's phone.

14 Number (2) was --

15 THE COURT: All right. All right. I -- I agree,  
16 paragraph 7 says that forensics determine -- the report of Ms.  
17 Ross that is -- that the videos you cite in your sentence  
18 memorandum were on the minor victim's phone. What I want to  
19 know is -- it's her contention that they weren't provided in  
20 discovery or that her -- her client never received them. To  
21 what effect is -- is that, if any -- if anything?

22 MS. SMITH: Right. And that's why I'm saying she's  
23 incorrect. I did an evidence review with Ms. Barkovic. The  
24 following was recovered on the defendant's thumb drive. There  
25 are videos of Minor Victim 1 penetrating herself vaginally and

1 anally with a hairbrush. There are screen shots of Minor  
2 Victim 1 using duct tape on her body, including her nipples.  
3 He referenced the scene where Minor Victim 1 tears duct tape  
4 off her mouth and pulls the panties out of her mouth for the  
5 camera, he referenced that in his interview, and remnants of  
6 Minor Victim 1 masturbating her breasts while wearing  
7 clothespins were also on the thumb drive. That was provided in  
8 an evidence interview to Ms. Barkovic. I sat with her while  
9 she reviewed the evidence.

10 THE COURT: All right. Okay. All right. Okay.

11 MS. BARKOVIC: And just to correct something, I did  
12 do an evidence review, but the bottom line is that these four  
13 images were obtained from a file that came from MV-1's phone,  
14 not the defendant's devices. And there are no communications  
15 that I've been provided with where the defendant tells her to  
16 go get the dog and do what's listed in this Pre-Sentence Report  
17 in 17-B.

18 THE COURT: All right. Okay. The -- the job of the  
19 Court at this point is really very limited. It's not to  
20 determine whether or not the government provided discovery to  
21 the defense, and it's not to determine whether or not he was  
22 counseled and whether it was a good idea for him to agree to  
23 the enhancement.

24 The simple question before the Court is -- and I --  
25 you know, I -- I'm not going to beat around the bush. If you,

1 Ms. Barkovic, and your client down the line decide that, you  
2 know, there was ineffective assistance of counsel in another  
3 context or whatever, you -- you are going to determine whether  
4 or not that's something you want to pursue.

5 But in terms of sentencing, my job is to determine  
6 whether or not the offense conduct subsumes the activity set  
7 forth in the Pre-Sentence Report and whether or not that  
8 activity falls within the ambit of 2G2.1(b)(4), and I find that  
9 it does. *Corp* says very clearly that if conduct would cause an  
10 objective viewer to believe, without regard to the undepicted  
11 circumstances of the encounter, that activity in a picture is  
12 inflicting pain, emotional suffering or humiliation, then the  
13 enhancement applies.

14 I believe that the four videos that the government  
15 has lodged and that the probation officer listed were no  
16 question made by MV-1 within the relationship that she was  
17 having online with the defendant, that they were indeed, at the  
18 very minimum, humiliating, likely to cause emotional suffering,  
19 and in a couple of cases definitely would cause physical pain.

20 So I respect the argument of the defense and I  
21 appreciate the argument of the United States, but overall I  
22 find that the probation officer did not err in her establishing  
23 the four-point enhancement under 2G1. -- excuse me, 2G2.1(b)(4)  
24 for sadistic and masochistic conduct as interpreted by *United*  
25 *States vs. Corp*, 668 F.3d 379. That will be my ruling on that

1 objection.

2 And I think with that, we are ready to make the  
3 Court's findings on the Offense Level, guideline range, et  
4 cetera, correct, Ms. Smith?

5 MS. SMITH: Yes, Your Honor.

6 THE COURT: Ms. Barkovic?

7 MS. BARKOVIC: Yes, Your Honor. Thank you.

8 THE COURT: All right. Thank you very much. The  
9 Offense Level is 39, the Criminal History Category is I. The  
10 guideline range at that level, advisory, is 262 to 327 months.  
11 That does match up with the Plea Agreement that was negotiated  
12 by the parties. There's no ability for the Court to impose  
13 probation at that level.

14 There's no agreement as to any fine, but I do think  
15 I'm going to avoid imposing a fine because there is a -- a  
16 restitution issue that we need to determine, number one, and  
17 there's no ability for this defendant to pay a fine. Number  
18 two, there's a special assessment that's agreed upon and a  
19 five-year mandatory supervised release term minimum.

20 So that's the findings of the Court in terms of what  
21 the sentencing options are going forward.

22 Before we get to allocution, let's resolve  
23 restitution. The United States has filed a memorandum with  
24 support, although the letters were not signed. Ms. Barkovic  
25 points out, and I -- I agree, that the letters of the

1 therapeutic expert, the counselor and psychologist, Ms.  
2 Pfeiffer, as well as the victim's statement, which I don't  
3 think is actually out of -- out of line given the privacy  
4 issues, were not signed.

5 But regardless of that, Pfeiffer says we're going to  
6 need \$42,000 worth of future therapy to get this victim back on  
7 her feet. There are approximately 1,900 or more dollars worth  
8 of costs dealing with transportation, and then there's another  
9 \$2,200 worth of costs that were incurred as a result of prior  
10 therapy. Add all that up, you get \$47,127 as restitution that  
11 this victim -- or that this defendant is responsible for under  
12 the statute to be paid to the victim of this crime.

13 Is there anything I'm missing or anything else you  
14 want to say as to restitution, Ms. Smith?

15 MS. SMITH: No, Your Honor, except that I do have the  
16 original letter from the counselor that is signed. I'm not  
17 sure how -- I think what happened was the counselor e-mailed me  
18 the first copy and then -- and then sent the second one through  
19 the mail.

20 THE COURT: I suspected as much, but as long as  
21 you're willing to say that this redacted letter at page 2 of  
22 Exhibit 3 of your supplemental restitution memo is accurate,  
23 I'm -- I'm -- I'm -- I won't quibble with that, I'll accept it,  
24 but -- but that's where I'm at. Anything else?

25 MS. SMITH: Nothing further, Your Honor. I think I

1 covered it in my briefing.

2 THE COURT: All right. You did. Thank you very  
3 much. I read your brief as well.

4 Any further argument on restitution, Ms. Barkovic?

5 MS. BARKOVIC: No further argument, Your Honor. I'd  
6 rely on my brief.

7 THE COURT: Okay. Great. Restitution in personal  
8 offenses or non-financial crimes is relatively rare. For  
9 whatever reason -- well, not for whatever reason, but for well  
10 thought out legislative reasons the Congress enacted mandatory  
11 restitution for sexual exploitation of children. That's  
12 Section 2259 of 18 U.S. Code.

13 *Evers*, which is another Sixth Circuit case, 669 645  
14 from 2012, makes restitution mandatory and directs the  
15 defendant to pay the victim the full amount of the victim's  
16 losses. Losses have been construed in the full amount to  
17 include costs incurred by the victim for psychiatric and  
18 psychological care, lost income, attorney's fees, other losses,  
19 things of that nature.

20 Again, I understand the objection and the briefing of  
21 Ms. Barkovic that was very well done and much appreciated by  
22 the Court as good advocacy for a defendant, but this is not the  
23 type of -- in fact, I -- I think the government's estimates  
24 have actually been somewhat conservative. I've seen in other  
25 cases other expenses asked for and ultimately agreements



1 reached, but -- but I think that transportation, prior  
2 counseling fees and future counseling fees are all within the  
3 ambit of the order. And *Paroline*, which is a Supreme Court  
4 case from 2014, encourage district courts to award restitution  
5 and certainly didn't -- didn't hold back on the application of  
6 2259. So I am going to find a \$47,127.60 amount for  
7 restitution.

8 I will say if the future -- if the future counseling  
9 is not obtained, and in my view it should be but that's not up  
10 to me, if it's not obtained, the victim is not entitled to a  
11 windfall. This is restitution that's to go to pay for certain  
12 expenses and that's why I'm awarding the amount.

13 So that's going to be my finding on restitution.  
14 Anything else from Ms. Smith or Ms. Barkovic on that particular  
15 issue?

16 MS. SMITH: No, Your Honor, except that I attached a  
17 proposed order to my request as well.

18 THE COURT: Okay. I don't know if we need to sign  
19 that, but I will enter restitution as part of the criminal  
20 judgment in the case.

21 MS. SMITH: Thank you.

22 MS. BARKOVIC: Nothing further, Your Honor. Thank  
23 you.

24 THE COURT: Okay. Thank you both.

25 With that, the defendant has the right to make any

1 remarks as to the appropriate sentence in the case, as to any  
2 issues in -- in mitigation that he'd like to say.

3 First of all, I'd like to hear from his lawyer, Ms.  
4 Barkovic, as to the appropriate sentence. I've read  
5 everything, including the sentencing memoranda, the sentencing  
6 requests, and probably most compelling to me -- I have a lot of  
7 respect for Dr. Sugrue. I've met him and I'm familiar with his  
8 work. He's appeared in other cases here. I think he's a  
9 really straight shooter, unlike some of these people you get  
10 out there these days, and he -- he did a -- a good report.  
11 I've read that.

12 So whatever you'd like to say as to sentence I'm  
13 pleased to hear at this point.

14 MS. BARKOVIC: Thank you for the opportunity, Your  
15 Honor.

16 Before the Court today is Mr. Randy Montante. He's  
17 25 years old. At the time of the offense he was 23 years old,  
18 Your Honor.

19 Unfortunately Mr. Montante had a tough time engaging  
20 in a relationship with a female in real life so he turned to  
21 online services in an attempt to meet people, socialize and  
22 hopefully get a girlfriend.

23 He met MV-1 online. I know the Court's aware of it,  
24 but she purported to be an 18-year-old female, created an  
25 elaborate back story. He fell in love with her, Your Honor.

1 Over the course of six or seven months they talked daily,  
2 extensively, and their discussions were not just sexually  
3 oriented discussions.

4 He was confronted by her mother eventually and made a  
5 poor decision by resuming contact with her after a period of  
6 non-contact.

7 This has been one of the -- and will be one of the  
8 hardest things in his life as well as his family's life, Your  
9 Honor. He has a great background. He's got no criminal  
10 history whatsoever. He comes from a hard-working immigrant  
11 family who's always done nothing but support him and be there  
12 for him. They sent him to a Catholic high school. He was  
13 short, a few credits short of completing his undergraduate  
14 degree through the University of Michigan Dearborn. He was  
15 working, and, in fact, he volunteered in his spare time. We  
16 submitted several letters to this Court. All of those letters  
17 attest to his character, and I'd ask that the Court take that  
18 into consideration with respect to sentencing.

19 He's had no contact with MV-1 since the inception of  
20 this matter, has no interest in ever doing so again. That ties  
21 into the report prepared both by Dr. Shiener and Dr. Sugrue.  
22 Dr. Sugrue and Dr. Shiener both opine that Mr. Montante is not  
23 a pedophile, that there is little to no recidivism risk, and  
24 it's unlikely that he suffers from any compulsive sexual  
25 behavior. Obviously we are before the Court on a sexually

1 oriented offense, so I believe that those findings by two  
2 qualified professionals are very, very relevant.

3 The government asks that the Court impose a sentence  
4 within the guideline range which starts at the bottom, Your  
5 Honor, at 22 and a half years. That is extreme. What I'm  
6 asking the Court to do, given his background, history, all of  
7 the information that's been set forth in the pleadings filed  
8 with this Court, I'm asking for 15 years. The Court's aware  
9 he's going to be on the sex offenders registry upon release.  
10 If the Court imposes a sentence of 15 years, he'll be close to  
11 40 years old at the time he is released. It's unlikely that  
12 this will ever happen again. It was an isolated incident  
13 involving one female and an emotional connection. So I'd hate  
14 to see this gentleman spend 28 years in prison, 25, 22 or even  
15 15, Your Honor. I understand that the Court's bound by the  
16 minimum, but I'm asking that the Court sentence him to no more  
17 than 15 years and that the Court consider sentencing him to a  
18 facility that is in this area so that his family who he has a  
19 great relationship with can visit him on a frequent basis.

20 THE COURT: Okay. All right. Thank you very much  
21 for those remarks and for all your hard work on the file in  
22 support of your client's matter. We're grateful and it's  
23 appreciated.

24 Mr. Montante, you as well have the opportunity to  
25 speak personally to the Court as to any remarks you'd like to

1 make as to the sentence, the offense conduct or any mitigating  
2 factors as well. I'm glad to hear from you. Go right ahead.

3 DEFENDANT MONTANTE: Okay. Good morning, Your Honor.  
4 My name is Randy Montante. I'd like to say a few things and  
5 talk about the type of person I am.

6 I'd describe myself as a healthy young adult who --

7 THE COURT REPORTER: Wait, wait, wait. Sir, you've  
8 got to slow down.

9 DEFENDANT MONTANTE: Oh, sorry.

10 THE COURT REPORTER: You've got to slow down, start  
11 over. You'd describe yourself as a healthy young adult who..."

12 DEFENDANT MONTANTE: Yes. Who prior to my arrest  
13 volunteered at the Filipino American Community Center, worked  
14 part-time hosting at a restaurant, and worked on finishing my  
15 history and political science degrees at University of Michigan  
16 Dearborn.

17 When I wasn't out with friends, you could usually  
18 find me at my grandmother Naning's [sic] house with the rest of  
19 my extended family.

20 THE COURT REPORTER: Slow down.

21 DEFENDANT MONTANTE: Despite all the support and  
22 happiness my family and friends provided, I was still a  
23 slightly depressed 23-year-old struggling to finish college.  
24 My close friends were all starting careers or getting married  
25 and moving forward with their lives. I felt like I was being

1 left behind.

2 I have a lot to be thankful for, but the one thing I  
3 never had was a significant other. In this day and age, if you  
4 can't find someone offline, you have the option to look online  
5 as well, and that's what I did. I frequented the adult chat  
6 site Omegle and had many good experiences on it in the form of  
7 stimulating, intellectual and entertaining conversations with  
8 people from all over the world. This is where I met MV-1.  
9 From the start she told me that she was 18 and consistently  
10 maintained and reinforced[the that point by telling me that she  
11 drove, babysat, and eventually that she was going to be  
12 attending Rutgers College in the fall.

13 Initially the conversations we had were light and  
14 basic but happened on a regular basis. Over time the frequency  
15 of our correspondence increased.

16 Early on, I confirmed my age as 23 and asked her if  
17 the five-year gap was a problem. She told me it wasn't. I  
18 asked her multiple times. I did not want to make her feel  
19 uncomfortable.

20 On multiple occasions I told her that she didn't need  
21 to talk to me if she didn't want to and that she could cut off  
22 all conduct, I just wouldn't talk to her anymore. She replied  
23 that it was her choice and that making -- that talking to me  
24 made her incredibly happy. It made me just as happy to hear  
25 that.

1           She is intelligent and well -- as well as texted in  
2 complete sentences, even using commas correctly, something not  
3 many people are able to do.

4           I enjoyed talking to her. She supported me through  
5 difficult times such as when my maternal grandmother passed  
6 away in May of 2016 and also expressed wholehearted interest in  
7 me as a person, and I was there to support her whenever she had  
8 a bad day and wanted to talk about it. It felt nice to be a  
9 shoulder to cry on, even if it was digitally.

10           She is the first person I ever romantically cared  
11 about and I'd never experienced that before. I fell in love  
12 with her but I never told her that.

13           During our last stretch of contact her mother became  
14 involved and warned me away, disclosing that her daughter, who  
15 I had seen over Skype, talked to on the phone and texted every  
16 day for half a year, was 12. It was the most shocking thing I  
17 had ever heard. It caught me off guard and I couldn't believe  
18 it, I didn't believe it. Nothing she previously told me gave  
19 me any warning that she was anything other than 18. I spoke  
20 harshly to her mother and I deeply regret it. I was so blinded  
21 and emotionally distraught that I couldn't think straight and I  
22 panicked, leading to my current incarceration. I did not keep  
23 my emotions, some of which I had never felt before, in check.

24           This whole situation has me overwhelmed. I was  
25 naive. No one in my family or anyone I'm associated with has

1 ever gone through something like this so I had no idea what I  
2 was getting myself into or what I got myself into.

3 And the facts of the case were never fully discussed  
4 by my prior attorney and he never explained the potential  
5 implications of this case. I could never fathom that the scope  
6 of my mistake would literally take my entire life away from me.  
7 Now I'll have to spend the rest of the prime of my life in  
8 prison and the rest of my life regretting it as well as dealing  
9 with the lasting repercussions.

10 This whole ordeal has been harder for my family to  
11 bear than it has been for me. The strain and difficulty this  
12 situation has placed on them is something I'll never be able to  
13 resolve and must carry with that -- that with me as well.

14 This is to say nothing of her, MV-1, and her family  
15 and the embarrassment and hardship she and they have been put  
16 through. I'm deeply ashamed and would beg their forgiveness.  
17 She's an intelligent, compassionate and overall thoughtful  
18 human being. She doesn't deserve to go through this. No one  
19 deserves to go through this.

20 I pray she's able to move past this and find  
21 happiness and success in life. I hope she forgets about me.  
22 It would have been best if I had never talked to her. It's  
23 done nothing but caused needless pain, sadness and anguish to  
24 everyone involved.

25 I have not yet been able to help better the world



1 through any meaningful work or career. This being the case, I  
2 resolve to make the most of my time in prison being productive.  
3 My plans to continue are finish my college degrees and also  
4 learn a trade such as plumbing or electrical work. My goal is  
5 to become a published author while incarcerated.

6           Aside from this, I would -- I also plan on  
7 maintaining good physical health and mental health. This would  
8 be aided by allowing me to continue to use e-mail services to  
9 better communicate with my loved ones, especially those who  
10 live too far to visit often.

11           Being designated and sent to Milan's Federal  
12 Correctional Institution would also be ideal as it would allow  
13 my family and friends to continue to visit regularly. They're  
14 my support system here, and when I'm released they'll be my  
15 support system as well.

16           I wish to better myself through this and move on in  
17 the best way I possibly can. I understand and acknowledge that  
18 through my actions I failed in my responsibility as an adult.  
19 I never intended to hurt or endanger anyone, most of all her.

20           I'm truly sorry for all that has happened. Though I  
21 have inconvenienced the Court and put both her family and mine  
22 through a horrible experience, I ask for forgiveness. I  
23 apologize for my actions. I know that my great remorse can't  
24 fix the sins of the past, what's done is done, but I beg your  
25 leniency and that of the court during the sentencing so I may

1 eventually pay back my debt to society. Thank you.

2 THE COURT: All right. Thank you very much, Mr.  
3 Montante, for those heartfelt remarks. The Court appreciates  
4 them very much.

5 And the Court also recognizes the people of the  
6 United States for any remarks they'd like to make. The United  
7 States gets an opportunity to speak as to the appropriate  
8 sentence as well.

9 Two things, Ms. Smith. The first is whether MV-1,  
10 who is the victim here, would like to be heard or make any  
11 statement today.

12 And secondly, I have read your sentencing memorandum  
13 initially filed as well as in reaction to the second sentence  
14 memorandum Ms. Barkovic filed, so I'm familiar with all the  
15 materials in the file as well.

16 Go right ahead.

17 MS. SMITH: Your Honor, Minor Victim 1 is not here  
18 today and neither are her parents, and I'd like to address that  
19 in part of my allocution.

20 THE COURT: Sure.

21 MS. SMITH: I did receive a victim impact statement  
22 that I provided to the Court.

23 THE COURT: I -- I -- I did read that, yes, and the  
24 remarks of the mother. I'm sorry to interrupt, but I -- I do  
25 want the record to be clear that I received all that and read

1 it as well.

2 MS. SMITH: Thank you.

3 THE COURT: Go right ahead.

4 MS. SMITH: And as part of my allocution when I get  
5 there, I will read some portions of that letter.

6 There are four points that I want to make this  
7 morning, understanding that the Court is very familiar with the  
8 facts of this case and that the Court has thoroughly read all  
9 of the filings which at times have been voluminous and -- in  
10 nature.

11 So the United States, Your Honor, is asking for a  
12 sentence within the guidelines, which is 262 to 327 months.

13 The first point I want to make is about the nature  
14 and circumstances of this offense. Now, the defendant has had  
15 a very long time to write a very eloquent and well-spoken  
16 allocution to this Court, but the evidence in this case  
17 demonstrates that this was not simply a case of mistaken  
18 identity or a case of Romeo and Juliet. This victim was  
19 13 years old, not 17, not 16, she was 13.

20 She told him, and we have evidence as early as June  
21 that she told him, she was 13. He didn't want to believe it,  
22 he denied it. He continued to ignore her when she tried to  
23 bring it up. Her -- she doesn't look like an 18-year-old, she  
24 certainly wasn't acting like an 18-year-old, and his -- her  
25 mother told him not once but twice that she was a child. And

1     instead of saying good-bye, which is what a 23-year-old should  
2     have done, he decided to try to teach her to hide her  
3     activities with him and even explained to her that, quote, "I'm  
4     going to talk to you like you're 18 and in college because if  
5     the cops find out, I'm going to jail for at least ten years.  
6     And if they ask you, you have to tell them I thought you were  
7     18 and that you told me you were the whole time because if I  
8     can deny it, I'll be fine. I researched it."

9             Your Honor, this is a serious offense. This  
10     defendant took advantage of a very young child. He was  
11     undeterred by her mother's message twice to him. He was  
12     undeterred by the threat of law enforcement for which Minor  
13     Victim 1's mother told him she was going to the police, and he  
14     was undeterred by the fact that this child was just 13 years  
15     old.

16             Secondly, the history and characteristics of this  
17     defendant warrant a guideline sentence. As this Court knows, I  
18     am also very familiar with Dr. Sugrue's work. He appears on  
19     behalf of the defense in very, very many child exploitation  
20     cases. And I would point out that I have read his report, and  
21     I think that the Court is -- or should review this in the light  
22     by which it was obtained. Much of the information relies  
23     exclusively on the defendant's version of the events, and most  
24     certainly at the point in time that Dr. Sugrue interviewed him,  
25     the defendant had every incentive to present himself in the

1 most favorable light, and, in fact, Dr. Sugrue picked up on  
2 that in the Minnesota Personality Test where he indicated that  
3 it appeared that the defendant was trying to make himself look  
4 better.

5           What Dr. Sugrue did discover is that it is consistent  
6 with the defendant's actions here, and that's that the  
7 defendant has a sexual interest in young preteen and teen  
8 girls, and that's evidenced not just by his relationship with  
9 Minor Victim 1 but we also found pictures that he had saved to  
10 a thumb drive of four unknown individual girls who appeared to  
11 be around the same age as Minor Victim 1.

12           Now, most predictive of repeat or escalating  
13 offenses, the United States Sentencing Commission has -- has  
14 opined with both the defense and prosecutors agreeing that  
15 instead of looking at recidivism rates in hard core numbers,  
16 the better assessment for future dangerousness is two factors:  
17 the first is personality, meaning antisocial behavior, and the  
18 second is sexual deviancy. That is most accurately tested by  
19 the Hare Psychopathy Checklist.

20           Now, Dr. Sugrue gave the -- the preliminary  
21 checklist, he didn't do the full checklist, but I can proffer  
22 to the Court that Dr. Sugrue's evaluation found that the  
23 defendant had narcissistic tendencies. That is considered an  
24 antisocial behavior that would support an increased risk for  
25 re-offense or escalating offense.

1           Secondly, there are sexual deviancy factors present  
2 here, and sexual deviancy is defined as any abnormal source of  
3 sexual attraction. Here we have a sexual attraction to young  
4 children, preteen and young teens, and we have a sexual  
5 attraction to sadomasochistic type activity.

6           Both of the factors that the Hare Psychopathy  
7 Checklist indicates are risk factors are present in this case.  
8 And like I said, the reason why science is moving towards these  
9 behavioral tests is because tests like the Static-99 are  
10 unreliable. They're unreliable because they only rely on  
11 convictions, and there is a long way from criminal behavior to  
12 an arrest to a conviction to prison time.

13           The third point, Your Honor, has to do with just  
14 punishment and deterrence because, as the Court knows, this  
15 isn't just about the defendant's psychological mis --  
16 psychological condition. This is about all of the 3553(a)  
17 factors.

18           Congress has set the minimum punishment of 15 years  
19 for minimal offenders. What that means is one -- one picture,  
20 one snapshot in time of sexually explicit behavior of a child  
21 warrants a 15-year custodial sentence.

22           And we have so much more than that here. We have a  
23 period of months where the defendant engaged this child both to  
24 create videos, to create pictures, and to spend hours upon  
25 hours upon hours through the night, through the day of her live

1 streaming, performing sexual acts on herself.

2 And in the face of being told that this -- her --  
3 that his conduct was illegal, he turned to manipulate her into  
4 hiding her activities from her parents, the people that she  
5 should trust the most, the people that should be giving her a  
6 soft spot to fall. He turned her against them and instructed  
7 her to delete everything she was doing and to hide her  
8 activities. And, in fact, the defendant himself deleted so  
9 much of his activity that all we are left with is a sliver of  
10 time between the defendant and Minor Victim 1.

11 There is also something to be said about the  
12 congressional mandate of the United States Sentencing  
13 Guidelines and the mandatory minimums. Congress has set forth  
14 the United States Sentencing Commission who has had every  
15 opportunity to review and make revisions to certain  
16 enhancements and guideline ranges. The guideline range is set  
17 to capture the heartland of offenses for a particular -- for a  
18 particular statute violation, and in this case Congress has set  
19 this penalty at 262 to 327 months. The defendant has presented  
20 nothing that would take him outside the heartland of cases, and  
21 therefore that makes this a guideline sentence.

22 Finally, Your Honor, I want to speak a bit -- a bit  
23 about this victim and her family. This case was opened in 2016  
24 and I have personally gotten to know the victim and her family.  
25 They have been very active in participating in the prosecution

1 of this case. Minor Victim 1's mother was anguished about  
2 whether or not she should fly in today and appear before you.  
3 She had a very real concern that the media might publish a  
4 story because the media had initially covered this case from  
5 the onset. Out of fear that her daughter's identity may be  
6 revealed, she decided not to appear today.

7 And so while I recognize that the defendant has a  
8 number of family members here to support them, I would urge the  
9 Court to consider the fact that if this -- if this victim were  
10 not afraid, if perhaps we were in her jurisdiction, I would  
11 have my side of the courtroom filled with family members that  
12 are concerned for this child.

13 And in lieu of appearing today, Minor Victim 1's  
14 mother submitted this statement that I just want to read a  
15 couple of -- a couple of things to help capture what it's like  
16 to be on this side, what it has been like for the victim and  
17 her family.

18 THE COURT: I -- I -- you go ahead and do that, of  
19 course, but I assume this came from what you have attached to  
20 your sentence memorandum?

21 MS. SMITH: Yes.

22 THE COURT: Okay. Go ahead.

23 MS. SMITH: Yes. She writes, quote, "She was just  
24 coming out of the sixth grade when he took advantage of a  
25 fragile, innocent, young girl. He tried to alienate her from



1 her family and make her dependent upon him. He robbed her of  
2 her innocence. We've watched a young girl who was a straight-A  
3 honor student, on the softball team, singing, dance, doing  
4 plays, gymnastics and outgoing start to shut down, lock herself  
5 in her room, cry and withdraw from her family and friends. She  
6 felt all alone, scared and afraid. He robbed her of her  
7 childhood, her happiness, her mental well-being. He robbed her  
8 from us. She is emotionally, physically and mentally  
9 traumatized. We have been in counseling since we found out  
10 what happened.

11 "I need the Court to show her that her courage to  
12 come forward was not in vain. We need the Court to show her  
13 that her courage to report him and -- to us and the law was not  
14 in vain, that he will never be able to go near or hurt children  
15 ever again.

16 "You have no idea how hard this has been, and the  
17 only solace for our family will be that he is punished to the  
18 fullest extent of the law. I cry every night. There isn't a  
19 day that this has left us, not for a single minute. The pain  
20 is life-lasting and we are managing it the best we can."

21 And, Your Honor, I can proffer to the Court that  
22 Minor Victim 1's mother contacts me on a weekly basis, and in  
23 times where we have court hearings, she contacts me on a daily  
24 basis. This family is very interested in receiving justice for  
25 this child, and in the United States' view, justice is a

1 sentence of 262 to 327 months.

2 THE COURT: Okay. Very good. Thank you as well for  
3 those remarks on behalf of the United States, Ms. Smith, which  
4 were very compelling as well.

5 Okay. I have spoken to all the financial issues in  
6 the case. I'm going to analyze the 3553(a) factors, state the  
7 sentence and then give the lawyers for both sides an  
8 opportunity to make legal objections before the sentence is  
9 finally imposed.

10 It is, of course, the most difficult of cases because  
11 we have an individual who was -- had a bright future, falling  
12 into severe criminal activity and visiting upon the victim and  
13 her family the severe consequences that Ms. Smith just set  
14 forth.

15 The fact that there's a mandatory minimum of 15 years  
16 speaks to the Congress's will on behalf of the people of the  
17 United States of how these types of offenses should be -- your  
18 client's mother wants to say a few words? I just got a note.

19 MS. BARKOVIC: I apologize. I thought the Court had  
20 authorized it. I would have referenced it.

21 THE COURT: Well, I'm happy to hear from -- from the  
22 mom. I would -- yeah, I would have wanted to do that like  
23 between your speaking and your client's speaking, but I'm --  
24 I'm fine. It's -- it's -- it's fine if the mom wants to speak.

25 MS. BARKOVIC: Thank you, Judge. I appreciate it and

1 I apologize for the miscommunication.

2 THE COURT: Yep. Okay. Good morning to you.

3 MRS. MONTANTE: Good morning, Judge Murphy.

4 THE COURT: What's your name?

5 MRS. MONTANTE: I am Ruth Nibungco Montante.

6 THE COURT: Okay. Go ahead.

7 MRS. MONTANTE: Randy's mother.

8 THE COURT: Yes, go right ahead.

9 MRS. MONTANTE: On behalf of my husband along with  
10 our family and friends, I stand before this Court to ask for  
11 utmost consideration and your most sincere compassion for my  
12 son. The past year has been the most difficult time of my  
13 life. I never envisioned this to happen to our family. My  
14 only son, Randy, is definitely not the person being portrayed  
15 in this case. He is a good son. He's never been in trouble  
16 with the law prior to this case. He is a wonderful brother to  
17 his sister. It has been very difficult time for us as a family  
18 dealing with his more than a year of absence.

19 Randy is a compassionate, loving and honest person.  
20 He is trustworthy and respectful, especially to his elders. He  
21 gets along well with anyone he meets. Randy is generous with  
22 his time for besides taking college courses and working  
23 part-time, he still managed to volunteer his services at the  
24 Filipino Community Center. He helped with the youth program  
25 that taught the culture and history of the Philippines. He

1 spent most Sunday afternoons at the center.

2 Randy also helped with a friend who was a coach of a  
3 high school soccer team. His friend would call him when he  
4 needed extra hands in manning the gates during scheduled games.

5 We as a family also volunteered our time selling  
6 50/50 raffle tickets at the Ford Field for Cure For Cancer  
7 during the Lions games.

8 When the World Medical Relief Office was moving to a  
9 new location in Southfield, Randy volunteered with the building  
10 renovation by cleaning bricks that were demolished from  
11 partitions.

12 Randy also did chores for neighbors, single mother, a  
13 single working mother of two school-age children, assisting  
14 with yard work, mowing the lawn, shoveling snow and trimming  
15 trees without being asked.

16 These are only a few of the numerous instances that  
17 Randy showed his willingness to help when needed.

18 One thing that Randy had difficulty with was finding  
19 a sincere partner that he can share his time and activities  
20 with. He's character -- characterized as gregarious in social  
21 gatherings but extremely shy when it comes to meeting girls.  
22 But once these girls get to know him, he becomes their good  
23 friend. He wanted a girlfriend but was not able to move  
24 forward and ended up going online to find one.

25 Randy is short of a few credits to graduate a major

1 in his -- world history and political science, aspiring to be a  
2 professor one day.

3 My son was looking for love, for acceptance.  
4 Unfortunately he made a mistake, his first offense against an  
5 established law of this country. Randy is very sorry for what  
6 he has done.

7 It has been very difficult to go on living with the  
8 thought of my son incarcerated. I am reaching to you, please  
9 find appropriate rehabilitation that my not -- my son needs at  
10 this time. I plead for leniency, Your Honor, to please give  
11 Randy a chance to redeem himself of this mistake. Give him a  
12 chance to be productive member of the community. I hope that  
13 the right rehabilitation will help Randy. He is not a danger  
14 to anyone, most especially to young people.

15 Thank you, Your Honor, for allowing me this  
16 opportunity to speak before this Court for my son.

17 THE COURT: Okay.

18 MRS. MONTANTE: Thank you.

19 THE COURT: Thank you. You're very welcome. Thank  
20 you for those remarks and the time and emotion that you put  
21 into preparing them as well.

22 So I'll start over again. I'm going to talk about  
23 the 3553(a) factors and provide my justification for the  
24 sentence that both lawyers may object to if they decide to.

25 I don't know where I started, but my view obviously

1 is this is the most difficult of cases, and I think I did say  
2 you have a young man, law abiding, with a future and  
3 contributing, along with the devastation to a family that we  
4 just heard Ms. Smith speak in detail about, and now, of course,  
5 we have the devastation to the family of Mr. Montante, the  
6 defendant, who -- from whom's [sic] mother we heard.

7           Fifteen years is an extensive prison term for any  
8 crime, and the Congress has recognized this to be among the  
9 worst of them by imposing a mandatory term of 15 years for the  
10 reasons that Ms. Smith talked about. I think that the Congress  
11 wants to penalize Internet video pornography produced, enticed  
12 and distributed by minors because these types of situations  
13 arise from them and the emotional devastation that the victims  
14 feel. I'm not the least bit unmindful of that.

15           Moreover, the Sentencing Commission urges and highly  
16 recommends that federal judges take these types of crimes even  
17 more seriously because of the scientific underpinnings of what  
18 the lawyers and Dr. Sugrue have -- have addressed in terms of  
19 the severe consequences of online video criminal behavior with  
20 children and the effect it has on them going forward.

21           I'm not unmindful that 262 months is a guideline and  
22 therefore a reasonable sentence that I could -- could give and  
23 effectively have no appeal from.

24           I am going to vary somewhat and I'm not going to give  
25 the minimum, which is 15 years, that -- that, quite honestly,

1 the probation office recommended in this particular case and  
2 they see a lot more than I do, but I'm not going to go to 262  
3 either for a couple of reasons which I'll explain now.

4 Ms. Smith in her sentencing memorandum accurately  
5 states that 15 years would be appropriate for a first-time  
6 offender with the most minimum of offense conduct.

7 Notwithstanding that, this individual, Mr. Montante, did not  
8 offend before, he has no prior criminal involvement, and he got  
9 involved in this when he was not much out of his youth either.

10 Accordingly, I think there's room for punishing this  
11 conduct, de incentivizing it in the future, but still giving him  
12 a likelihood of rehabilitation if we say all right, I'm not  
13 giving you 262 months but I am giving you a serious term to  
14 punish your conduct and to deter future behavior.

15 One of the most compelling things I -- I see in the  
16 case is that the defendant did not take the material and sell  
17 it or give it to others. I do believe that he was involved in  
18 a skewed, inappropriate -- I hate to use psychological words  
19 because I'm not a psychologist, but manic relationship that he  
20 got fully carried away with, but it was very severe based on  
21 the evidence that I saw along with the age that the girl had  
22 disclosed and that her mother got involved in which led to  
23 devastation there.

24 There's no good sentence I can give in this case, but  
25 I've tried to approximate the incentives I think I can give for

1 rehabilitation and punishment in a variance of some sort along  
2 with a very serious term that would tell this defendant that  
3 the behavior he engaged in was intolerable and at the same time  
4 tell society that these types of crimes are not being taken  
5 anything less than seriously, at least by this federal judge.

6 Accordingly, pursuant to the Sentence Reform Act of  
7 1984, the Court, having considered all the sentence guidelines  
8 and factors laid out in 18 USC, Section 3553(a), hereby commits  
9 the defendant, Randy Montante, to the custody of the U.S.  
10 Bureau of Prisons for a term of 210 months.

11 It's further recommended that the defendant be  
12 designated to an institution with a comprehensive drug  
13 treatment program, and I believe he should be placed at an  
14 institution where he can get help, therapy and recovery from  
15 the behaviors that created him or caused him to engage in -- in  
16 these crimes.

17 I would be very happy to recommend his incarceration  
18 at FCI Milan, and I think the Bureau of Prisons should strongly  
19 consider placing him there because his mother, his father and  
20 the rest of his family give him a great deal of support, but I  
21 also think that any institution that has intensive treatment  
22 for rehabilitation of his sort of crime should be -- he should  
23 be placed there primarily.

24 Upon release from imprisonment, the defendant shall  
25 be placed on a supervised release term of five years.



1           The defendant may and will pay a special assessment  
2     of a hundred dollars along with a \$5,000 special assessment  
3     mandated under 18 USC, Section 3014(a) (3). Those special  
4     assessments are due immediately.

5           I'm going to institute a restitution order of  
6     \$47,127.60 pursuant to the legal ruling I made earlier.  
7     Accordingly, the defendant, while in custody, must participate  
8     in the Inmate Financial Responsibility Program, IFRP. I'm  
9     aware of the requirements of that program. I approve a payment  
10    schedule of the program that's appropriate to this case and  
11    hereby order the defendant's compliance with it.

12           No fine, no costs of incarceration, no costs of  
13    supervision will be imposed due to the defendant's lack of  
14    financial resources.

15           Mandatory drug testing will be ordered again because  
16    of the -- his history of abuse that we saw in the Pre-Sentence  
17    Report.

18           Supervised release. While on supervision, the  
19    defendant shall abide by the standard conditions adopted by the  
20    U.S. District Court for the Eastern District of Michigan and he  
21    shall comply with the following special conditions:

22           Due to the personal history, the characteristics of  
23    the instant offense and the other factors clearly set forth in  
24    the Pre-Sentence Report, the defendant shall participate in a  
25    program approved by the Probation Department for substance

1 abuse. That may include testing to determine if the defendant  
2 has reversed -- reverted to the use of drugs or alcohol.

3 If necessary while on supervised release, the  
4 defendant shall participate in a program approved by the  
5 Probation Department for mental health counseling.

6 He shall comply with the requirements of the Sex  
7 Offender Registration and Notification Act. That's known as  
8 SORNA and is recorded at 42 USC, Section 16901. He'll do that  
9 as directed by the probation officer, the Bureau of Prisons and  
10 any state sex offender registration agency in Michigan or  
11 wherever he ends up residing on supervised release, where he  
12 works, is a student, or here in Michigan where he was convicted  
13 of the qualifying offense.

14 Mr. Montante shall provide his probation officer with  
15 accurate information about all computer systems, hardware,  
16 software, passwords, Internet service providers and other  
17 computer materials that the defendant has potential access to  
18 on supervised release and abide by all rules of the U.S.  
19 Probation Department's Computer Monitoring Program.

20 He shall only access a computer approved by the  
21 probation officer.

22 He must consent to the probation officer conducting  
23 periodic, unannounced examinations of all computer systems,  
24 which may include computer monitoring software, at the  
25 defendant's expense.

1           For the purpose of accounting for all computer  
2 hardware, software and accessories as well as computers  
3 themselves, the defendant must submit his person, residence,  
4 computer and vehicle to a search conducted by the Probation  
5 Department at a reasonable time and manner.

6           Mr. Montante must inform other residents of the  
7 premises in which he resides that his computer may be subject  
8 to search pursuant to the condition I just laid out.

9           The defendant shall provide a probation officer with  
10 access to any requested financial information, including  
11 billing records for the telephone, cable, Internet, cell phone,  
12 satellite, et cetera.

13           Mr. Montante will be required to successfully  
14 complete sex offender diagnostic evaluations, treatment and  
15 counseling programs and polygraph examinations as directed by  
16 the probation officer. Reports pertaining to sex offender  
17 assessments, treatments and polygraph examinations shall be  
18 provided to his probation officer. As directed by the Court,  
19 the defendant shall pay all or a part of the costs of the  
20 diagnostic evaluations, treatment or counseling programs, and  
21 the polygraph examination is based upon their ability to pay.

22           The defendant shall not purchase, sell, view or  
23 possess images in any form of media or live venue that depict  
24 pornography, sexually explicit conduct, child erotica, child  
25 nudity or anything else, whether adult or child. The defendant

1 shall not patronize any place where any such material or  
2 entertainment is available.

3 He shall not associate with minor children under the  
4 age of 18 except in the presence of a responsible adult who is  
5 aware of the nature of this offense and background and who has  
6 been approved by the probation officer. Mr. Montante shall not  
7 frequent places where children congregate on a regular basis.  
8 Those types of places would include, but are not limited to,  
9 schools, playgrounds, child toy stores, video arcades and  
10 things of that nature.

11 Finally, Mr. Montante must submit his person,  
12 residence, office, vehicles, papers, business or place of  
13 employment and any property under his control to a search.  
14 Such a search will be conducted by the probation officer at a  
15 reasonable time and in a reasonable manner based upon  
16 reasonable suspicion of contraband or evidence of a violation  
17 of -- or condition of supervised release being present.  
18 Failure to submit to such a search may be grounds for  
19 revocation. Mr. Montante shall warn any residents of the  
20 premises where he lives that those residents -- premises may  
21 be subject to search.

22 That will be the sentence of the Court. Is there any  
23 reason other than what you've already argued to the Court why  
24 the sentence that I stated should not be imposed, Ms. Smith?

25 MS. SMITH: No, Your Honor.

1 THE COURT: Okay. Thank you. And Ms. Barkovic?

2 MS. BARKOVIC: No, Your Honor.

3 THE COURT: Okay. The Court will order the sentence  
4 that I stated earlier to be imposed after the statements of  
5 counsel.

6 There is a waiver of the right to appeal the sentence  
7 in this case. Under some circumstances, a defendant has a  
8 right to appeal his sentence and plea, but here, Mr. Montante,  
9 you have waived your right as part of the Plea Agreement. And  
10 since you've entered into a Plea Agreement that waives your  
11 right to appeal the sentence if I sentence below the guideline  
12 range, that waiver is enforceable. If you believe that yours  
13 is not, you can take that up with the U.S. Court of Appeals  
14 directly.

15 The defendant is in custody and will be remanded to  
16 the marshals' care for continued service of his sentence.

17 Both parties have copies of the Pre-Sentence Report.  
18 I will furnish amended copies that address resolution of  
19 disputed issues, although I think the report will be accepted  
20 as stands so we won't need to revise it. Complete copies will  
21 be ultimately prepared and sent to the Bureau of Prisons and  
22 the Sentencing Commission. Any other copies are to be kept  
23 strictly confidential.

24 That is the end of the proceedings from this side of  
25 the bench. Anything else from the United States?

1 MS. SMITH: Yes, Your Honor, I have two housekeeping  
2 issues. First, because the defendant was sentenced within the  
3 parameters of the Rule 11 Plea Agreement, I move to dismiss  
4 Counts 2, 3 and 4 of the indictment.

5 THE COURT: Those are dismissed on your motion, and  
6 if you could provide an order to us, we'll enter that on the  
7 docket.

8 MS. SMITH: Sure. And secondly, I do not have any  
9 objections to the sentence that I have not previously raised,  
10 and I would ask that you ask defense counsel the same.

11 THE COURT: I did do that and you both said no.  
12 Okay. All right.

13 Okay. Mr. Montante, I -- I tried to be lenient but  
14 also take into consideration the seriousness of what happened.  
15 I wish you good luck. This is bad for everybody. I will say  
16 that at the end of your term, I think you can do really, really  
17 well, and I hope you stick to what you read to me in that  
18 letter. If you do, you'll be better off and everybody will be  
19 better off for it. All right.

20 Okay. We'll be in recess now.

21 MS. SMITH: Thank you.

22 THE COURT: Thank you all very much.

23 DEFENDANT MONTANTE: Thank you.

24 THE CLERK: All rise. The Court is in recess.

25 (Court in recess at 12:22 p.m.)

— — —  
C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 47 comprise a full, true and correct transcript of the proceedings held in the matter of United States of America vs. Randy Nibungco Montante, Case No. 16-20576, on Thursday, January 25, 2018.

s/Linda M. Cavanagh  
\_\_\_\_\_  
Linda M. Cavanagh, RMR, RDR, CRR, CRC  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: March 27, 2018  
Detroit, Michigan